

1           A       It says it was the work -- make-ready work  
2 for permit K-70. That's what it says on the face  
3 sheet.

4           Q       And does this given an indication that you  
5 can tell as to what the total cost of that make-ready  
6 project was as far as permit K-70 is concerned?

7           A       Yes. I'm not sure about that. I'm not  
8 sure if this is a piece or -- or a -- or a total for  
9 Knology K-70.

10          Q       Well, do you know what the figure on the  
11 far right in the total column that says 24 comma 964  
12 represents?

13          A       That would be dollars.

14          Q       And when it says bill to others, would  
15 that mean to -- to Knology?

16          A       In this case, it would have been bill to  
17 Knology it looks like.

18          Q       And then the total net cost, does that  
19 mean the total net cost to Gulf Power as zero?

20          A       I'm not sure. I've been out of the -- I'm  
21 not sure.

22          Q       I'm also going to ask you the other -- the

1 other worksheets that you had mentioned was K-43, do  
2 you see that in your testimony -- let me find it now -  
3 -

4 A What page would that be on, Mr. Seiver?  
5 I think it's K-48.

6 Q K-48. I'm sorry. And it's on Gulf 43,  
7 page 57. I'm going to just go down to the exhibit  
8 that matches it.

9 A Yes, sir. I see page 57.

10 Q And if you look at the -- what's on the  
11 screen -- I've done my best to -- I think it's the  
12 same one -- looking at K-48, would it be fair to say  
13 then that the numbers in the far right-hand corner  
14 under total are dollars, the 9,038, which would be  
15 billed to others for this particular permit?

16 A That's correct, 9,038. But, again, I  
17 don't know what the total scope of that would be.

18 Q And as far as total net cost, you don't  
19 know if that means there was no net cost to Gulf  
20 Power?

21 A Well, it's a make-ready job, so it would  
22 be -- total cost of the job would go to the -- whoever

1 is permitting.

2 Q Do you know was the JETS system used for  
3 estimating the Knology make-ready?

4 A This was done on JETS it appears to me.

5 Q Do you know was JETS accurate on this  
6 particular job?

7 A JETS was inaccurate on many jobs with  
8 Knology. I do not know if it was accurate on this one  
9 or not.

10 Q Do you know if JETS was -- in the  
11 instances where it was inaccurate, do you know if  
12 Knology was asked to and made up the difference  
13 between the JETS amount and what was the real cost?

14 A Are you -- are you asking me did we bring  
15 to the attention of Knology that their costs were  
16 higher than the actual jets work order?

17 Q That's the first point, yes.

18 A We did.

19 Q And did you bill Knology for the  
20 difference?

21 A Yes, we did.

22 Q Did Knology pay it?

1 A They paid some of it.

2 Q Did they ever pay all of it?

3 A They did.

4 Q Do you know if they paid for the entirety  
5 of the make-ready project for the Panama City  
6 construction?

7 A There was a dispute at the end of the  
8 project, and the parties came together and -- and  
9 settled once the project was completed.

10 Q During the project, do you recall that  
11 Gulf Power charged Knology for the time of a employee  
12 of Gulf Power, Glen Crutchfield, for 40 hours each  
13 week?

14 A He worked on the project, yes.

15 Q Is that a yes that his time was billed  
16 directly to Knology?

17 A I don't know.

18 Q You know Mr. Tommy Forbes, don't you?

19 A I do.

20 Q Did you have a chance to review any of his  
21 deposition testimony?

22 A I did not.

1 Q I'm going to ask you to take a look at our  
2 Deposition Exhibits --

3 JUDGE SIPPEL: These are the excerpted  
4 versions?

5 MR. SEIVER: Yes, Your Honor. I'm going  
6 to have him what is page 129 of the excerpts and, in  
7 particular, if you would look to page 70 -- it's up in  
8 the right-hand corner. If you could start the  
9 question that on line 9, the engineering contractor.  
10 That's who did the make-ready originally, the make-  
11 ready estimates. If you go down further, line 16, Mr.  
12 Forbes says (reading) "I believe during the project  
13 timeframe, Glenn Crutchfield, a Gulf Power employee,  
14 his total time, his 40 hours each week, was billed to  
15 Knology, which they agreed to. He was devoted  
16 strictly to the project" (end reading).

17 MR. LANGLEY: Your Honor, I'm going to  
18 object to any further reading of the Tommy Forbes  
19 deposition. Mr. Bowen has already said that it's not  
20 a deposition that he's read.

21 JUDGE SIPPEL: All right. Let me -- let  
22 me find out. What -- what is it that you're trying to

1 do with this witness with somebody else's deposition?

2 MR. SEIVER: Just to have him make --  
3 understand that there was someone under oath that  
4 testified that Mr. Crutchfield's time was billed to  
5 Knology, because I think he wasn't sure that it was,  
6 and I was just showing him and was going to ask him if  
7 he had any reason to believe that this is -- statement  
8 is not accurate since he did not remember himself.

9 JUDGE SIPPEL: Well, if he doesn't  
10 remember, you can't tell whether or not the statement  
11 is accurate or inaccurate. All's you know is that he  
12 doesn't remember. That doesn't go anywhere.

13 MR. SEIVER: Well, then I'll ask him if it  
14 refreshes his recollection.

15 BY MR. SEIVER:

16 Q Does this refresh your recollection about  
17 whether Mr. Crutchfield's time was billed to Knology?

18 A I didn't know that Mr. Crutchfield's time  
19 -- I just don't recall it. I'm sorry. I'll try to  
20 help any way I can, but I just don't remember.

21 JUDGE SIPPEL: I'm going to sustain the  
22 objection, and I don't see any point in pursuing his

1 knowledge of Thomas Forbes' testimony -- deposition  
2 testimony that is.

3 MR. SEIVER: Very well, Your Honor.

4 BY MR. SEIVER:

5 Q Do you know was an outside contractor  
6 besides Gulf Power and an outside contractor, I think,  
7 called Red Simpson used to do any of the Knology  
8 project work?

9 A There was a contractor used, but I don't  
10 know the name of the companies.

11 Q Do you remember if it was a significant  
12 amount of -- of work that the outside contractor did?

13 A I'm sure it was. It was a significant  
14 amount of make-ready.

15 Q Do you know what the total amount of make-  
16 ready was for the whole project? Do you remember?

17 A I have a vague recollection?

18 Q Over one million dollars?

19 A I believe it was.

20 Q Maybe one million three -- if you  
21 remember?

22 A I don't remember the exact amount.

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1           Q       If you look at -- I mean -- I'm sorry --  
2       I don't mean if you look at. Do you remember whether  
3       or not Gulf Power billed Knology not only for the work  
4       of the outside contractor but added in a 30 percent  
5       premium as an overhead charge the -- the monies that  
6       were paid to an outside contractor?

7           A       You're asking me do I know specifically on  
8       this job or in general that we have overhead and we  
9       charge for our overhead?

10          Q       I'll break it into two questions. The  
11       second question first. Do you generally bill a  
12       premium for overhead for jobs?

13          A       We don't bill a premium.

14          Q       Did you remember billing a premium for  
15       this KNology make over project for outside contractor  
16       --

17          A       We don't bill premiums.

18          Q       So, if I showed you some testimony from  
19       Mr. Forbes, that would help you remember about the  
20       Knology project?

21          A       The terms that I'm answering and the  
22       question you're asking me is do we bill premiums, and



1 we do not bill premiums. It doesn't matter who said  
2 it. We don't do it.

3 JUDGE SIPPEL: Would somebody please  
4 define what they mean by premium.

5 MR. SEIVER: Well, I mean a differential,  
6 and I was working from a deposition that Mr. Forbes  
7 had given where he explained that there was a 30  
8 percent overhead in addition to whatever the actual  
9 outside contractors' invoices were.

10 MR. LANGLEY: Your Honor, I thought you  
11 had already sustained our objection --

12 JUDGE SIPPEL: Yes, we did.

13 MR. LANGLEY: -- Mr. Seiver --

14 JUDGE SIPPEL: But I'm trying to find --  
15 I -- he was talking -- he wasn't -- I -- I -- this is  
16 the first I knew that Forbes was in on this. Both of  
17 you are using the word premium. I don't know what  
18 you're using the term premium in respect to. He may  
19 be talking about an insurance policy. You may be  
20 talking about something else. I don't know what  
21 you're talking about.

22 THE WITNESS: I'm refusing to answer the

1 question, because I don't know what he's talking  
2 about.

3 JUDGE SIPPEL: There you go. Let's define  
4 by what you mean by premium. Maybe you ought to ask  
5 him what a premium is?

6 BY MR. SEIVER:

7 Q Did you charge anything above the actual  
8 cost of an outside contractor's payments to Knology?

9 A Above the actual cost? We bill them the  
10 way we would normally bill a job with the exception  
11 that we had significant overages, and we captured  
12 those actual costs and billed them for that.

13 Q Did you bill anything above the actual  
14 cost to Knology?

15 A We billed overheads, which is done on a  
16 percentage basis, so technically, I guess, we never  
17 would have an actual cost, because we're billing in a  
18 percentage that we don't know if the overhead and  
19 supervision was actual or not, but that's the way we  
20 do our jobs.

21 Q And what is the percentage?

22 A Well, I'm -- I'm not certain of what the

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1 percentage is, but I think you're -- we're pretty  
2 close with the area we're discussing.

3 Q And that is -- if you could say the  
4 numbers? Is it 30 percent?

5 A I'm fuzzy on that, but I -- I think we're  
6 in the right area.

7 Q Mr. Bowen, you also had testified when you  
8 -- before you were turned over to cross examination  
9 about some changes in your -- in your testimony, and  
10 one of the changes that you had talked about was on  
11 page 22 of your testimony if you could turn to that.  
12 Ms. Corbyn, you can shut the screen off.

13 A Yes, sir. I've got page 22.

14 Q And if I recall, there was a sentence  
15 starting on line 19 that says (reading) "Some  
16 telecommunications carriers like Knology, Inc. pay the  
17 higher FCC telecom rate" (end reading). And you  
18 struck that entire sentence.

19 A I did --

20 Q Is that right? And I -- I believe you  
21 added when you were speaking is that they should be  
22 paying that rate. Is that what you say?

1 A I think they should be.

2 Q What are they paying?

3 A They're paying the -- the same as your  
4 clients are. They're paying -- we have the same  
5 agreement, the old rate.

6 Q Of six dollars?

7 A I don't recall the exact figure.

8 Q And what would be the FCC telecom rate?

9 A It would be in the same neighborhood.

10 Q And you don't think they should be paying  
11 the \$40.60 cent just compensation rate?

12 A No. You misinterpreted my comment.

13 Q Well, will you please explain it.

14 A We're billing them at the -- the same just  
15 compensation rate that we are the other -- your --  
16 same as your clients, but they -- their minimum, in my  
17 opinion, should be the -- the telecom. That should be  
18 the starting point.

19 Q But you agree with them that they could  
20 pay the cable rate instead?

21 JUDGE SIPPEL: Who's the them? Are we  
22 talking about his --

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1 MR. SEIVER: No, Knology.

2 JUDGE SIPPEL: No, not Knology?

3 THE WITNESS: He's talking about Knology,  
4 another company outside of the FCC.

5 JUDGE SIPPEL: Are you saying Knology  
6 should pay -- the starting point for what Knology  
7 should pay is at the telecom rate? Is that what I  
8 heard you say? I'm not trying to argue with -- I just  
9 want to --

10 THE WITNESS: Yes, sir. Well, they're  
11 providing a telecommunication service. They have, you  
12 know, long distance and -- I mean --

13 JUDGE SIPPEL: No, you don't have to  
14 explain it to me. This is what you're saying, right?

15 THE WITNESS: Yes, I believe they're -- I  
16 -- my personal opinion is that I believe they're a  
17 telecom, but I don't -- I guess I can't prove it.

18 JUDGE SIPPEL: Okay. Take it from there,  
19 Mr. Seiver. I'm just trying to keep myself on track -

20 -

21 MR. SEIVER: I understand, Your Honor.

22 BY MR. SEIVER:

1 Q So you agreed with them that they could  
2 pay the cable rate instead of the telecom rate?

3 A We're -- I didn't agree or disagree with  
4 the rate they're paying.

5 Q Are you trying to collect the \$40.60 rate  
6 --

7 A Yes.

8 Q -- from them? Have you brought a -- a  
9 lawsuit or any kind of action against them to collect  
10 that?

11 A No, sir.

12 Q Do you plan on it?

13 A That wouldn't be a decision that I'd make.

14 JUDGE SIPPEL: Are you almost finished  
15 with this --

16 MR. SEIVER: Your Honor, if -- if the  
17 court would prefer a break, I could probably tie up my  
18 --

19 JUDGE SIPPEL: That's wasn't my question -  
20 -

21 MR. SEIVER: No, I -- I've got 15 or 20  
22 minutes more. I could tighten it up. Maybe even get

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1 it to less than that.

2 JUDGE SIPPEL: Do you want to go -- keep  
3 going?

4 THE WITNESS: Sure.

5 JUDGE SIPPEL: Okay. Let's keep going.

6 BY MR. SEIVER:

7 Q Mr. Bowen, I want you to change to looking  
8 at page nine of your testimony. Do you see that?  
9 Page -- I mean line six, you mention, and this is in  
10 reference to the four complainants, that each of these  
11 entities has attachments on Gulf Power's poles through  
12 a mandatory right of access under the Pole Attachment  
13 Act. Is that your language from your testimony?

14 A What line again?

15 Q Line six and seven.

16 A That's what I said.

17 Q Pardon me?

18 A That's what I said. Yes --

19 Q That's what it said. And you understand  
20 what the mandatory right of access is under the pole  
21 attachment act?

22 A Well, that's a legal document, and if

1 you're asking me for a legal opinion, I probably  
2 wouldn't be the best one to -- to describe that.

3 Q No. I'm just trying to understand. You  
4 said it in your testimony, and I just want to  
5 understand what you mean by it -- their mandatory  
6 right of access under the Act. You said that's what  
7 they have. How do you know it?

8 A I guess from being in this business, I've  
9 --

10 Q But are you trying to contrast it with  
11 voluntary as opposed to voluntary right of access?

12 A Well, my understanding it would have been  
13 voluntary up to 1996.

14 Q So the attachments that complainants,  
15 whatever number they might be, to the poles that Gulf  
16 Power had up to '96, were deemed voluntary? Is that  
17 right?

18 A Voluntary attachments?

19 Q Yes.

20 A Yes.

21 Q And what happened in '96 to change them  
22 from voluntary to mandatory?



1           A       Well, that's when the Telecommunication  
2 Act came out, and it said -- it mandated -- or gave  
3 the -- the operators mandatory access.

4           Q       Did that change the character of any of  
5 the existing attachments that had been voluntary up to  
6 that point?

7           A       I'm not sure what you're saying. Is that  
8 -- are you talking about, what, physical or?

9           Q       Physical, yes. I'm going to start with  
10 that.

11          A       What --

12          Q       Did it change the attachments in any way?  
13 I mean was it a watershed day and everybody just threw  
14 their hands up and said this is never going to be the  
15 same, or did business go on as usual?

16          A       Well, it became -- what -- what that  
17 changed was was the law, and the access to our poles  
18 became mandatory, so it changed our -- you know, it  
19 changed everything.

20          Q       Now prior to the '96 Act, when a  
21 complainant asked for a pole attachment, they had an  
22 agreement, they would submit a permit, and make-ready

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1 was required, did you have to do the make-ready, or  
2 did you willingly do the make-ready?

3 A We didn't have to do the make-ready.

4 Q After the '96 Act, you've got an existing  
5 attacher and they want to -- with a pole agreement,  
6 they want to get on another pole, and they submit a  
7 permit. Did you have to do the make-ready or not do  
8 the make-ready?

9 A We don't have to do the make-ready.

10 Q So that didn't change from the -- before  
11 the '96 Act until after the '96 act?

12 A What changed was is I don't have the  
13 option.

14 Q You don't have the option to what?

15 A To select who go -- to -- to put on who,  
16 you know, I want on.

17 Q Well, if they're existing attachers,  
18 you've already willingly put them on the pole? Is  
19 that right?

20 A If they're existing attachers, and we  
21 already had an agreement, and if we've already let  
22 them on the poles, they're already on, that's true.

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1 Q So as soon as the law changed, you decided  
2 you wanted to kick everybody off?

3 A I didn't decide that.

4 Q Did Gulf Power decide that?

5 A I didn't say that.

6 Q At some point after the '96 Act, did Gulf  
7 Power decide to kick everybody off the poles?

8 A If they did, I'm not aware of it.

9 Q Didn't Gulf Power terminate or refuse to  
10 renew the prior agreements on or about 2000 and demand  
11 that the complainants agree to a mandatory attachment  
12 rights in order to stay on the pole?

13 A We had -- we -- the -- we let the -- the  
14 permits -- or excuse me -- the contracts run their  
15 course with the exception of one, and at which time,  
16 we -- we tried to enter into negotiations and were  
17 stonewalled.

18 Q But part of those negotiations were a  
19 demand by Gulf Power to treat all the existing  
20 attachments as mandatory attachments? Is that right?

21 A We had -- they were treated as mandatory --  
22 -- we were just reflecting the -- the language of the

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1 law, Mr. Seiver. That's what it says, mandatory  
2 access.

3 Q And the reason that you did that was just  
4 to comply with the law or did you have another reason?

5 A I don't know.

6 Q Now you say on page 17 of your testimony -  
7 -

8 A Yes?

9 Q -- line seven, (reading) "We are simply  
10 required to allow access to cable companies if there  
11 is capacity --

12 A Seventeen -- page 17, line what?

13 Q Seven -- I'm sorry. (Reading) "We are  
14 simply required to allow access to cable companies if  
15 there is capacity and if the existing conditions of  
16 the pole are such that attachments can be made  
17 consistent with the NESC comma, Gulf Power specs  
18 comma, sound engineering practice comma, and other  
19 applicable codes" (end reading).

20 A That's what I said.

21 Q Now does that mean you are not required to  
22 do any make-ready?

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1 A We are not required to do make-ready.

2 Q Well, would it be fair to assume then that  
3 if you do agree to perform make-ready, that the  
4 resultant attachments are voluntary and not mandatory?

5 A All attachments are subject to being  
6 reviewed, and if we -- we've just chosen to allow them  
7 to attach, all the companies with existing contracts -  
8 - all the companies that do have contracts.

9 Q Well, then they're voluntary attachments,  
10 not mandatory attachments, right?

11 A We've allowed all of the companies to  
12 attach that have contracts. All those permits that  
13 they've submitted were subject to not being approved,  
14 but they were approved with, I'm sure, some  
15 exceptions.

16 Q Voluntarily, right? There was no  
17 compulsion to approve those, was there? You said you  
18 didn't have to.

19 A We didn't have to approve them.

20 Q So, wouldn't it be fair to say that the  
21 attachments, as a result of any make-readies or  
22 change-outs or permitting or whatever are voluntary?

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1           A       All the attachments up to 1996 were  
2 voluntary. Then it was mandated to us by congress in  
3 the Telecommunication Act. We've already covered  
4 that.

5           Q       So did any attachment after 1996, even  
6 where you willingly performed make-ready or change-  
7 outs, rearrangements or whatever, are not voluntary  
8 attachments?

9           A       We allowed them after that as we evaluated  
10 what we needed to do with respect to that change in  
11 law.

12          Q       But your understanding of mandatory access  
13 is that you would not have to rearrange or change out  
14 in order to accommodate an attachment? Is that right?

15          A       My understanding is is that we do not have  
16 to provide make-ready. It is our decision.

17          Q       And you have been providing make-ready?

18          A       We have provided make-ready many  
19 occasions.

20                   MR. SEIVER: Your Honor, that's all I have  
21 for Mr. Bowen.

22                   JUDGE SIPPEL: Okay. Is it my -- are you

1 saying that make-ready work is -- I now that -- that  
2 the, from other testimony and whatnot, that the cable  
3 company pays for it, but you mean the make-ready --  
4 providing an opportunity to do a make-ready is -- is  
5 optional even after 1996?

6 THE WITNESS: That's my understanding.

7 JUDGE SIPPEL: All right. We are in  
8 recess until ten minutes -- well, let's say until five  
9 minutes of the hour -- five minutes of the hour by the  
10 clock in the back. Okay. You're still under oath.  
11 You'll be turned back for -- are you -- just a minute.  
12 Does the Bureau have any questions on cross?

13 MS. LIEN: No, we do not, Your Honor.

14 JUDGE SIPPEL: So you'll be turned back  
15 for redirect with counsel, so don't talk about your  
16 testimony during the break, okay?

17 THE WITNESS: Yes, sir.

18 JUDGE SIPPEL: All right, we're in recess.

19 (Whereupon, the matter went off the record  
20 at 2:39 p.m. and back on the record at 2:55 p.m.)

21 JUDGE SIPPEL: We are back on the record,  
22 and the witness is still on the witness. Mr. Bowen,

1 you're still under oath, sir. And Mr. Langley?

2 THE WITNESS: Thank you.

3 MR. LANGLEY: Does the Bureau have any --

4 JUDGE SIPPEL: No, we asked them before we  
5 went off the record. They said no. They declined.

6 RE-DIRECT

7 BY MR. LANGLEY:

8 Q Mr. Bowen, Mr. Seiver had asked you a few  
9 questions about what he suggested were mistakes in  
10 some on the data that Osmose collected. Do you recall  
11 those questions?

12 A I recall some of them, yes.

13 Q And when Gulf Power was first meeting with  
14 Osmose to discuss this project, what did Gulf Power  
15 intend for Osmose to -- to capture? What -- what  
16 number of poles?

17 A Total number of poles or -- we asked them  
18 to capture all joint use poles we had in our service  
19 territory.

20 Q And how many was that?

21 A About 150,000.

22 Q And if at that time Gulf Power had known



1 that the actual poles that would be discussed at the  
2 hearing were in the 50 -- 40 or 50 range, would Gulf  
3 Power have requested that there be further time spent  
4 at each individual pole to ensure better quality  
5 control?

6 MR. SEIVER: Objection, Your Honor.  
7 That's -- that's leading and testimony for Mr. Langley  
8 is --

9 JUDGE SIPPEL: I'll sustain the objection.

10 MR. LANGLEY: Your Honor, may I take  
11 exception to that ruling, because --

12 JUDGE SIPPEL: Sure.

13 MR. LANGLEY: -- I asked a question that  
14 did not suggest an answer. It was a -- it was a yes  
15 or no question, and I did not suggest it one way or  
16 another?

17 JUDGE SIPPEL: Well, I think it did call  
18 for a conclusion that's going to be favorable to you,  
19 but if you want to ask him what would they have done  
20 differently with 50 versus 150,000, you may ask him  
21 that.

22 BY MR. LANGLEY: